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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA
9

10 **United States of America,**

11 Plaintiff,

12 v.

13 **John Kane and**
14 **Andre Nestor,**

15 Defendant.
16

Case No. 2:11-cr-022-MMD-GWF

Motion to Dismiss

17 The United States moves to dismiss count one of the indictment in this
18 matter without prejudice pursuant to Fed.R.Crim.P. 48(a).¹ Originally the
19 indictment charged the defendants with one count of conspiracy to commit wire
20 fraud (count one) and two counts of computer fraud (counts two and three). CR 12.
21 On May 6, 2013, the government moved to dismiss counts two and three, CR 110,
22 after the magistrate judge filed a report and recommendation, CR 86,
23 recommending the Court grant defendants' motion to dismiss those counts. Since
24 then the government has evaluated the evidence and circumstances surrounding
25 count one and determined that it in the interest of justice it should not go forward
26

27 ¹ Fed.R.Crim.P. 48(a) provides: "The government may, with leave of court, dismiss an indictment, information, or
28 complaint. The government may not dismiss the prosecution during trial without the defendant's consent."

1 with the case under the present circumstances. Accordingly, the government asks
2 that count one be dismissed without prejudice. *See United States v. Raineri*, 42 F.3d
3 36, 43 (1st Cir. 1994) (“Customarily, Rule 48(a) dismissals are without prejudice and
4 permit the government to reindict within the statute of limitations.”).

5 Respectfully submitted,

6 Daniel G. Bogden
7 United States Attorney

8 By: /s/ Daniel R. Schiess
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10 Assistant United States Attorney
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Certificate of Service

I certify that a copy of the foregoing pleading was filed on the Court's electronic filing system on the date set forth below, thereby effectuating service on defense counsel.

Dated: November 22, 2013.

/s/ Daniel R. Schiess